

OLC - 78-487/2

23 February 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Office of Legislative Counsel's Correspondence to OMB
re CIA's Views on the Administration's Proposed
Legislation, the "Civil Service Reform Act"

1. In reviewing OLC's response to OMB's request for CIA's views on the President's proposed legislation to reform the Federal personnel management system (OP had submitted our views to OLC on 14 Feb 1978), we noted two specific comments which we strongly believe should be "recalled". There are commentary items as follows:

a. "As described in Title I, the merit system principles would conflict with the exempted status of CIA under 50 U.S.C. 403j. This section has been consistently interpreted as providing CIA with statutory exemption from the competitive service in order to allow the Agency greater flexibility in performing its functions. Furthermore, the Agency's excepted status is not governed by Civil Service Commission excepted position schedules", and

b. "The rigid merit system principles in Title I of the proposed Civil Service Reform Act would hamper CIA in its staffing flexibility and requirements. For example, Section 202(1) provides that selection and advancement of applicants must be determined through "fair and open competition". Also, Section 202(2) would require CIA to give equal consideration to all applicants, regardless of political affiliations and national origins, a procedure which would conflict with necessary security considerations".

2. As regards the eight "merit system principles" as defined in the draft bill (see attachment), the Agency's policies on personnel management in fact follow the principles that are presented. All Heads of Federal agencies are charged with following these principles. As an agency excepted from the Civil Service competitive "merit" system, CIA is not required to adhere to the policies, rules, regulations or procedures as promulgated by the Civil Service Commission to agencies subject to the CSC's jurisdiction as regards how the "merit system principles" are to be applied. The second comment re equal consideration to all applicants, regardless of "political affiliations and national origins" as conflicting

with necessary security considerations is totally improper and must be recalled. The Agency adheres to a nondiscriminatory policy as regards these and other related principles (e.g., race, color, religion, etc). Whether an applicant can meet our security requirements is based on separate considerations.

3. On 23 February 1978 I telephoned OLC [] and urged that the referenced comments be recalled from the OMB response for the reasons stated above.

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DD/Pers-P&C

Att.

cc: OLC

1 "Sec. 202. Enumeration of merit principles

2 "To provide the people of the United States with a highly
3 competent, honest and productive Federal work force reflective of the
4 nation's diversity, and to improve the quality of public service,
5 Federal personnel administration is to be implemented consistent with
6 the following principles --

7 "(1) recruiting qualified candidates from appropriate
8 sources in an endeavor to achieve a work force from all segments
9 of society, with selection and advancement solely on the basis of
10 objective determinations of relative ability, knowledge and
11 skills, as determined through fair and open competition which
12 assures that all receive equal opportunity;

13 "(2) assuring all applicants and employees of fair and
14 equitable treatment in all aspects of personnel administration
15 without regard to political affiliation, race, color, religion,
16 national origin, sex, marital status, age or handicapping
17 condition and with proper regard for their privacy and
18 constitutional rights as citizens and Federal employees;

19 "(3) providing equal pay for work of equal value to attract
20 and retain highly qualified personnel, with appropriate
21 incentives and recognition for excellence in performance;

22 "(4) assuring a competent work force in which all employees
23 maintain high standards of integrity, conduct and concern for the
24 public interest;

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1 "(5) assuring that the work force is efficiently and
2 effectively utilized;

3 "(6) retaining employees on the basis of the adequacy of
4 their performance, correcting inadequate performance, and
5 separating employees who can not or will not improve their
6 performance to meet required standards;

7 "(7) developing and utilizing employees for better
8 organizational and individual performance through effective
9 education and training; and

10 "(8) assuring that employees are protected against
11 arbitrary action, personal favoritism or coercion for partisan
12 political purposes and are prohibited from using their official
13 authority for the purpose of interfering with or affecting the
14 result of an election or a nomination for office.